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Decided by:	First Vice-Chairman: Juan E. Mendez; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert Goldman, Peter Laurie, Julio Prado Vallejo. Commissioner Claudio Grossman, a Chilean national, did not participate in discussing and deciding on this case in accordance with Article 19(2)(a) of the IACHR's Regulations.
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Represented by:	APPLICANT: Nelson Caucoto Pereira
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I. SUMMARY

1. On June 26, 1997, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint from lawyer Nelson Caucoto Pereira (“the petitioner”) alleging the international responsibility of the Republic of Chile (“the State”) in the forced disappearance of Samuel Alfonso Catalán Lincoleo at the hands of State agents following his arrest on August 27, 1974, and in the subsequent denial of justice.

2. The complaint reports that Samuel Alfonso Catalán Lincoleo, aged 29, an agricultural technician with ties to the Communist Party, was arrested at 2:00 a.m. on August 27, 1974, at his home in the city of Lautaro, Chile. The arrest was carried out by carabineros, soldiers, and civilians, and Mr. Catalán Lincoleo’s relatives were told that he was being held at a military facility in Lautaro. Samuel Alfonso Catalán Lincoleo’s disappearance has continued since that day. His family reported the incident to the Chilean judicial system in 1979, but the proceedings were filed in October 1981 under Decree-Law N° 2191 of 1978, which ordered an amnesty for abuses committed following the September 1973 coup d’état in Chile. Fresh legal action was brought in 1992, which was definitively dismissed in November 1995 under the aforesaid amnesty law. Finally, Chile’s Supreme Court of Justice ruled on an appeal for annulment regarding the substance of the case in a decision handed down on January 16, 1997, which declared that the time allotted for legal action had expired under applicable statutory limitations.

3. As a result of its analysis, the IACHR concludes in this report that the arrest and forced disappearance of Samuel Alfonso Catalán Lincoleo at the hands of agents of the Chilean State

made that State responsible for violating the following rights protected by the American Convention on Human Rights (the “American Convention”): the right to life (Article 4), to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), and to judicial protection (Article 25), all in conjunction with the obligation set forth in Article 1(1) of the same international instrument. The IACHR also concludes that the incidents described herein constitute violations of the right to life, liberty, and personal security protected by Article I of the American Declaration of the Rights and Duties of Man (“the American Declaration”). Finally, the Inter-American Commission determines that Decree-Law N° 2191 of 1978 is incompatible with the American Convention, which was ratified by Chile on August 21, 1990, and, consequently, that the Chilean State has not complied with Article 2 thereof by failing to adapt its domestic laws to the provisions of the international instrument.

II. PROCESSING BY THE COMMISSION

4. On July 14, 1997, the Inter-American Commission transmitted the pertinent parts of the petition to the Chilean State and gave it a period of 90 days to submit information regarding the incident and the exhaustion of domestic remedies.

5. The State’s reply was received on October 2, 1997, and was forwarded to the petitioner. The petitioner’s comments were received on December 2, 1997, and were transmitted to the Chilean State.

6. On February 10, 1998, the State sent its comments, which were forwarded to the petitioner on February 25, 1998. The petitioner’s final comments were sent to the Chilean State on April 25, 1998. On June 18, a communication was received from the State in which it repeated its position on this case and provided additional information about new legal precedents in Chile under which application of the amnesty law could be rejected. This communication from the State was passed on to the petitioner.

7. On December 2, 1998, the IACHR placed itself at the disposal to the parties to begin friendly settlement proceedings in this case. The 30-day limit set for this purpose came and went without any reply from the parties.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. The petitioner maintains that the Chilean State is internationally responsible for the arbitrary arrest and forced disappearance of Samuel Alfonso Catalán Lincoleo and for the impunity associated with those events. The petitioner states his position in the following terms:

The forced disappearance of Samuel Alfonso Catalán Lincoleo is a crime against humanity, the perpetrators of which can be granted no exoneration of punishment. International law does not admit amnesties or statutory limitations for crimes like these, which are condemned by the international community as a whole. Under international instruments such as the American Convention, the Covenant on Civil and Political Rights, and others, these crimes are above the

sphere in which a State may grant pardons in exercise of sovereign power, and, with respect to these crimes, explicit bans have been placed on the admissibility of statutory limitations and amnesties.

International crimes of this kind are not condemned by one country alone, but by all nations. Their criminal nature does not originate in the national law of one state, but in international law as agreed upon by all civilized nations. This means that a single state, acting on an individual basis, cannot erase the criminal nature of an action that the community of states has defined as an “international crime.” For that reason, in applying a statutory limitation, amnesty, or any other mechanism to exonerate the perpetrators’ guilt, the first human rights violation is compounded by a second one: that of impunity.

In the case at hand, the Supreme Court’s ruling that statutory limitations apply to the criminal proceedings brought--considering the debatable conditions under which that ruling was given (or not, as the case may be)--has had the grave effect of permanently ending a judicial investigation intended to uphold truth and justice in connection with the victim’s disappearance. That constitutes the denial of justice described herein. The proceedings were closed, without even having determined the victim’s whereabouts. The State irrevocably refuses to locate him. Furthermore, it has obviously refused to hear about the events that befell him and to identify and judge the perpetrators. By behaving in this fashion, the Supreme Court has placed the Chilean State in grave international responsibility.[FN1]

[FN1] Petitioner’s submission, June 26, 1997, pp. 9–10.

9. With regard to reparations, the petitioner questions the State’s claims:

What is the truth in this case? Were the killers of the victim indeed identified? Do we know who finally hid the body? Is the whereabouts of his grave known?

The truth of which the Chilean government speaks constitutes a part of the events and was already known to the victim’s family even before the National Truth and Reconciliation Commission was set up; it is, in other words, a minimal truth, of which prior knowledge existed. What we need to find out to complete the story and establish the whole truth is the location of the victim’s body and the identity of the criminals. And then, either simultaneously or subsequently, to judge and punish the perpetrators.

Consequently, believing that the State has discharged its tasks because a state agency, the National Truth and Reconciliation Commission, has recognized that the victim was killed by state agents, is completely inadequate in accordance with the demands that international law places on the Chilean State in this case.[FN2]

[FN2] Petitioner’s submission, December 2, 1997, p. 11.

B. Position of the State

10. Regarding the alleged incidents, the Chilean State maintains the following:

It must be stressed that the constitutional government of Chile does not deny the events described in the submission from the victim's representative. In fact, as soon as the democratic system was restored, President Patricio Aylwin, aware of the institutional difficulties inherent in dealing with the grave problem of human rights violations inherited from the military regime, set up the NATIONAL TRUTH AND RECONCILIATION COMMISSION by means of Interior Ministry Supreme Decree No. 355 of April 25, 1990; that is, one month after taking office.[FN3] (Emphasis in the original.)

[FN3] State's submission, October 2, 1997, p. 2. The State quotes the report of the National Truth and Reconciliation Commission as regards the present case:

During 1974, in the area around the city of Lautaro, numerous arrests were made that led to the disappearance of a series of individuals of Mapuche ethnic origin. Carabineros from the Lautaro detachment were actively involved in these incidents, except for one arrest that was carried out by members of the military and staff of the Investigations Police.

In most of these cases, the relatives of the Mapuche individuals who were arrested and subsequently disappeared generally bore the situation without attempting any legal measure or other proceedings to locate the victims. The reasons for this apparent passive attitude might have been fear, ignorance of how to proceed, and a fundamental disbelief in the likelihood of satisfying their demands through the institutions of the State.

On August 28, 1974, members of the army and officers from the Investigations Police arrested Samuel Alfonso Catalán Lincoleo, aged 29, apparently a member of the Communist Party. The police officers acknowledged the arrest in the corresponding criminal proceedings. Several family members and employees were arrested along with Samuel Catalán, all of whom are in agreement that they were taken to the barracks of the Concepción Regiment in Lautaro.

In light of the large number of reports that agree on the time of the arrests, the circumstances surrounding them, the subsequent disappearance of the victims (this case is related to the disappearance of Gervasio Héctor Hauiquil Calviqueo), the fact that there has been no information about them since then, and the similarity between the methods and procedures used in the arrest of these Mapuches and those used in other cases in the area that have already been investigated, the Commission concluded that all the aforesaid persons disappeared following their arrests at the hands of agents of the State and that, in this fashion, their human rights were violated.

11. The State also reports that its compensation policy is essentially set forth in Law 19.123, published in the Official Journal on February 8, 1992. This law provides victims' families with a lifetime pension in an amount no less than the average income of a Chilean family; a special procedure for declarations of presumed death; special assistance from the State for health care, education, and housing; the cancellation of educational, housing, tax, and other debts owed to state agencies; and exemptions from compulsory military service for victims' children.

12. Regarding the legal considerations related to the substance of the case, the State maintains that in exercising its right of free determination, the Chilean people chose a way to recover their democracy that meant accepting the institutional rules imposed by the dictatorship. It notes that the acceptance of those rules further implied acceptance of all the laws enacted by the dictatorship and the decision, within that legality and in accordance with its rules, to improve them until a fully democratic regime was achieved.

13. The State attests that “the democratic governments of Chile have not enacted amnesty laws incompatible with the American Convention, and emphasizes the fact that Decree-Law N° 2191 was issued in 1978 under the de facto military regime.” It holds that it is inadmissible to accuse the democratic governments of actions carried out many years before they came to power or committed by other branches of government, whose constitutional independence must be respected. It therefore requests that the IACHR bear in mind the historical context and the special circumstances of the country’s return to democracy, under which the new government had to abide by the rules imposed by the de facto military regime, which it was unable to modify other than in accordance with the law and the Constitution.

14. In the State’s opinion, the constitutional government cannot be required to infringe the institutionality it inherited or to attempt to modify it by means other than that same legality. It can only be urged to observe it or to work for its amendment or repeal, through the legal channels that it itself provides. The State holds that although the constitutional governments that followed the military regime share the petitioner’s criticisms of the 1978 amnesty, its provisions can be neither annulled nor repealed.

15. The State further notes that the democratic governments that came after the dictatorship have shown absolute respect toward the independence of the judiciary and have been unable to invalidate or annul the decisions of the judicial branch, even when contrary to their own positions or interests. Neither can a government undermine the tenure enjoyed by judges and magistrates as a guarantee of their independence.

16. It adds that the Chilean Executive, acting alone, does not have the power to annul legal provisions that have been recognized as valid by the other branches of government. Regarding the possibility of the amnesty law being repealed, the State explains that legal initiatives toward that end must originate with the Senate (Article 62(2) of the Constitution), where the ruling government does not enjoy a majority on account of the presence of senators who were not elected by the popular vote. In any event, it also holds that a repeal would not have any legal effects on any parties ultimately accused of the crime, because of the principle under which criminal law cannot be applied retroactively to a defendant (Article 19(3) of the Constitution).

17. With regard to the case in hand, the Chilean State reports that Samuel Alfonso Catalán Lincoleo’s family currently receive, on a monthly basis, the benefits granted by the law; they have also received the lump-sum compensation payment equal to twelve monthly pension payments and the applicable medical benefits. The State reports that Sofía Lincoleo Montero, Mr. Catalán Lincoleo’s mother, receives CLP \$106,367 (Chilean pesos); Adrina Albarrán, his

wife, receives CLP \$56,667; and that his son Samuel Catalán Albarrán also receives CLP \$56,667, plus \$147,327 to cover school enrolment and \$360,000 for school fees.

18. The State maintains that it cannot be blamed for the alleged violations and that it has no responsibility in the human rights violations that led to the opening of Case 11.771. It asks the Inter-American Commission to give consideration to the creation of the National Truth and Reconciliation Commission and to the provisions of Law 19.123, currently in force, as measures adopted to ensure respect for the human rights of Samuel Alfonso Catalán Lincoleo's family.

IV. ANALYSIS OF ADMISSIBILITY

A. Jurisdiction of the Commission

19. The Commission has determined that it is competent to examine violations of the American Declaration and the American Convention, provided that a situation in which rights protected by those instruments are being continuously violated effectively exists.[FN4] The Inter-American Court has established that, in principle, for states parties to the American Convention, the specific source of obligations regarding the protection of human rights is the Convention itself but that such states "cannot escape the obligations they have as members of the OAS under the Declaration." [FN5] The petitioner is legally entitled to appear in the case at hand (*locus standi*) and he has made allegations regarding forced disappearances that constitute a pattern of ongoing violation of precepts enshrined in the American Declaration and the American Convention. The events began when the obligation of respecting the American Declaration was in force for Chile as a member state of the OAS,[FN6] and they have continued up until the date of the present report. Consequently, the IACHR is competent to study these alleged violations of the American Convention and the American Declaration and to adopt decisions with respect to them.

[FN4] See, for example, IACHR, Annual Report 1987–1988, Resolution 26/88, Case 10.190, Argentina.

[FN5] Inter-Am.Ct.H.R., Advisory Opinion OC-10/89 "Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, paragraph 46.

[FN6] Article 20 of the IACHR's Statute establishes that:

In relation to those member states of the Organization that are not parties to the American Convention . . . the Commission shall have the following powers, in addition to those designated in Article 18: (a) to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration . . . (b) to examine communications submitted to it and any other available information, to address the government . . . for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate.

B. Exhaustion of domestic remedies

20. The petitioner claims that the remedies provided by domestic law have been exhausted. This process began with the complaint lodged on April 5, 1979, with the first-instance court in Lautaro and filed on October 7, 1981, under the terms of the amnesty law (Decree-Law N° 2191). Subsequently, Gerardo José Catalán Lincoleo, the victim's brother, filed a criminal suit on March 18, 1992, against Sergio Fernando Alcayaga Barraza, a second lieutenant in the army, for the crime of kidnapping. The court declared itself incompetent and referred the case to the military prosecutor's office in Temuco.

21. In the military proceedings that followed, final dismissal of the case was ordered on November 24, 1995, with the terms of the amnesty applied to the accused officer. The Catalán Lincoleo family's lawyers appealed, but a military judge dismissed their case. The litigants therefore sought a de facto remedy from the Military Court, which was admitted in a resolution issued on February 6, 1996. On April 10, 1996, the Military Court upheld the dismissal, but instead of basing its reasons on the amnesty, it argued that the case was dismissed because the case had already been judicially resolved (*res judicata*). The court applied this ruling to the proceedings that had previously been brought for the disappearance of Samuel Alfonso Catalán Lincoleo.

22. Following this ruling, on April 23, 1996, Mr. Catalán Lincoleo's representatives filed for its repeal with the Chilean Supreme Court of Justice. Chile's highest court rejected this repeal bid on January 16, 1997, arguing that statutory limitations now applied to the action. The petitioners refer to this ruling as the "definitive and unchangeable sentence that closes off the judicial avenues in these proceedings." The petitioners describe the legal effect of this ruling in the following terms:

The Supreme Court refrained from ruling on the merits of the repeal as sought and, to enable it to do so, offered an elaborate inadmissibility ruling. Thus, as indicated by its reading, the Court admitted another reason for criminal liability to have been extinguished, that of the application of statutory limitations and, accordingly, it holds that the judicial action was correctly cancelled.

With this ruling, the Supreme Court separated itself completely from the nature of the remedy and the legal question in dispute, since the ruling of the Military Court against which the appeal was filed determined the issue in question by applying the rule of *res judicata* to a case in which that was inadmissible. This mistaken application of the law led to the filing of the repeal suit in order to secure the nullification of that ruling.

(. . .)

In this case, the Supreme Court's ruling and all the earlier decisions handed down in the proceedings fail to establish what crime was committed against the disappeared person. And, since none was established, it is surprising to hear arguments maintaining that statutory limitations apply.[FN7]

[FN7] Petitioner's submission, June 26, 1997, pp. 4 and 7.

23. With respect to this case, the Chilean State has made no objection regarding compliance with the requirement that domestic remedies be exhausted.

24. The IACHR concludes that the decision given on January 16, 1997, by the Supreme Court of Justice of Chile exhausted the domestic remedies in this case, as required by Article 46 of the American Convention and Article 20(c) of the Statute of the Inter-American Commission.

C. Filing Period

25. The petition was submitted within a period of six months following notification of the final decision under Chile's domestic law, in compliance with Article 46(1)(b) of American Convention.

D. Duplication of Proceedings and Res Judicata

26. The substance of this petition is not pending in any other international settlement proceedings, nor is it the same as a petition that has already been examined by any other international body or the IACHR itself. Hence, the petition meets the requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention.

E. Characterization of the Alleged Facts

27. The petition describes facts that, if proven, could constitute violations of rights guaranteed in the American Declaration and the American Convention. Specifically, the claim refers to the alleged violation of rights protected by Article I of the American Declaration and by Articles 1(1), 2, 8, and 25 of the American Convention. It is not evident that the petition is manifestly groundless or obviously out of order, and thus the Inter-American Commission deems that the requirements contained in Article 47(c) of the American Convention have been met.

28. With regard to the enactment and enforcement of laws compatible with the American Convention (Articles 1 and 2), the IACHR is competent, under Article 42 thereof, to determine whether such provisions, including so-called "amnesty" laws and actions adopted thereunder, violate the obligations assumed by the state party in question.[FN8] In this connection, the Court has established that, "as a result of the foregoing, the Commission may recommend to a state the derogation or amendment of a conflicting norm that has come to its attention by any means whatsoever." [FN9]

[FN8] Thus, the IACHR must, in a given case, determine whether "what the norm provides contradicts the Convention and not whether it contradicts the internal legal order of the State." Inter-Am.Ct.H.R, Advisory Opinion OC-13/93, Series A, paragraph 29.

[FN9] Inter-Am.Ct.H.R, "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)," Advisory Opinion OC-14 of December 9, 1994, paragraph 39.

F. Friendly Settlement

29. The IACHR made itself available to the Chilean State and the petitioner on December 2, 1998, with a view toward beginning the procedure set forth in Article 48(1)(f) of the American Convention. The period of 30 days allotted for the parties to express their interest in friendly settlement proceedings in this case came to an end with no reply having been received.

G. Conclusions on Admissibility

30. The Commission believes that this case satisfies the formal requirements for admissibility set forth in Article 46(1) of the Convention and Article 32 of the IACHR's Regulations. The petitioner has exhausted the remedies available under Chilean law and has made a complaint in which the IACHR is competent to examine the merits of the case.

V. ANALYSIS OF MERITS

A. General Considerations

31. The petitioner's version of the events surrounding the alleged violation of the right to life, liberty, and humane treatment is based on judicial investigations and the report of the National Truth and Reconciliation Commission. These interpretations of the facts have not been disputed by the State in the proceedings before the Inter-American Commission.

32. This case requires a legal decision regarding the Chilean courts' application of the amnesty law vis-à-vis the arbitrary arrest and forced disappearance of Samuel Alfonso Catalán Lincoledo, in order to determine whether it is compatible with the American Convention.

33. The IACHR notes that the ruling of the Supreme Court of Justice that exhausted the Chilean domestic remedies closed off the legal avenues available to Samuel Alfonso Catalán Lincoledo's relatives for obtaining justice in the country. Although that ruling did not directly apply the amnesty law, it did uphold the courts' refusal to rule on the merits of the case in accordance with that precept. The decisions of the lower courts include the "total and definitive" dismissal of the complaint by the Chilean Military Court in accordance with the amnesty law, which led to the filing of the case on October 7, 1981. Similarly, the legal action brought on March 18, 1992, during the first democratic government, was definitively dismissed under the amnesty law on November 24, 1995. On appeal, the Military Court applied *res judicata* instead of the amnesty, arguing that the case had already been decided and upholding the dismissal. Finally, the case was taken to the Supreme Court of Justice and was dealt with as described above.

34. The complaint alleges that the amnesty law is incompatible with the American Convention, while the Chilean State's arguments focus on the limitations placed on the three branches of government by that domestic legal precept since the restoration of democracy. The Commission will analyze those arguments in this report.

35. The State has not denied the involvement of its agents in the events of this case, which were perpetrated while the military dictatorship ruled Chile. In considering the nature and seriousness of the crimes whose judgment was affected by the amnesty law, we must not lose sight of the fact that the military government that was in power from September 11, 1973, to March 11, 1990, pursued a systematic policy of repression that created thousands of victims of forced disappearances, summary executions, extrajudicial killings, and torture. Referring to the State's practices during that period, the IACHR said that:

That Government has used virtually all known means to physically eliminate dissidents, including: disappearances, summary executions of individuals and groups, executions ordered in trials lacking legal guarantees, and torture.[FN10]

[FN10] Inter-American Yearbook on Human Rights 1985, Martinus Nijhoff Pub., 1987, p. 1063.

36. The OAS General Assembly has declared that the practice of forced disappearances is "an affront to the conscience of the hemisphere and constitutes a crime against humanity." [FN11] In its 1988 decision in the Velásquez Rodríguez case, the Inter-American Court observed that international practice and doctrine have frequently categorized disappearances as a crime against humanity. [FN12] In its preamble, the Inter-American Convention on Forced Disappearance of Persons reaffirms that "the systematic practice of the forced disappearance of persons constitutes a crime against humanity." [FN13] The social need to clarify and investigate these crimes cannot be considered equal to that of a mere common crime. [FN14] Forced disappearances and related crimes, such as torture and summary execution, are of such gravity that several international instruments have established special standards for their adjudication, such as universal jurisdiction and exceptions to statutes of limitations, with the aim of avoiding impunity. [FN15]

[FN11] OAS General Assembly, Resolution AG/RES. 666 (XIII-0/83).

[FN12] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, No. 4, paragraph 153.

[FN13] Inter-American Convention on Forced Disappearance of Persons, Resolution adopted at the seventh plenary session of the OAS General Assembly on June 9, 1994. OEA/Ser.P AG/doc.3114/94 rev.

[FN14] OAS General Assembly, Resolutions AG/RES. 443 (IX-0/79), 742 (XIV-0/84), 950 (XVIII-0/88), 1022 (XIX-0/89), and 1044 (XX-0/90); IACHR, Annual Reports for 1978, 1980/81, 1981/82, 1985/86, and 1986/87, and Special Reports, including Argentina (1980), Chile (1985), and Guatemala (1985).

[FN15] Both the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons establish universal jurisdiction for the crimes in question (Article 11 and Articles V and VI, respectively). The Convention on Forced Disappearance also provides, in Article VII, for exemption from a statute of limitations or, if that is not possible, the application of limitations equal to those applying to the most serious crimes.

37. The Chilean State, recognizing its obligation to investigate past human rights violations, established a Truth Commission for the purpose of determining the facts and making the results public. As a reparations measure, then-President Patricio Aylwin apologized to the victims' families. He also publicly protested and criticized the decision in which the Supreme Court determined that application of the amnesty law had the effect of suspending the investigation into the systematic violations committed by the dictatorship.[FN16]

[FN16] President Aylwin stated:

Justice also requires the clarification of the whereabouts of the disappeared as well as the determination of individual responsibilities. Concerning the first point, the truth established in the report (of the Truth and Reconciliation Commission) is incomplete since in most cases in which the remains of the detained, the disappeared, and the executed were not returned to their families, the Commission did not have the means to determine their whereabouts.

38. The State points out the democratic governments' inability to modify or invalidate the amnesty law, as well as the State's obligation to respect the decisions of the judicial branch. The State also argues that the measures it adopted were both effective and sufficient to fulfill Chile's obligations under the Convention. While the petitioner recognizes the efforts made by Chile, he maintains that the State's efforts have been insufficient and that to date, it has not met the obligation of investigating the facts, identifying responsibilities, and punishing the perpetrators of the human rights violations suffered by Samuel Alfonso Catalán Lincoleo.

39. The State's position is based on the separation of the responsibilities of the executive, legislative, and judicial branches of government. Nevertheless, the Inter-American Commission must consider the international responsibility of the Chilean State as a whole for the acts of its organs and agents whose active and passive participation in the crimes committed against Samuel Alfonso Catalán Lincoleo has not been disputed.

40. The State argues that the executive branch, as an organ, is not responsible for the alleged violations because the democratic government has not enacted any amnesty laws. It maintains that it is unable to revoke the amnesty law or to adapt it or any other provisions to the American Convention. With respect to the application of the amnesty, the State can only act within the law and the Constitution, which establish the framework of its authority, responsibilities, and powers.

41. The Commission considers that Decree-Law N° 2191 and its legal effects are a continuation of policy of human rights violations pursued by the military regime that governed Chile from September 1973 to March 1990.[FN17] Although the statute in question was enacted by the de facto government of Gen. Augusto Pinochet, it is still applied in order to protect the planners and perpetrators of those crimes whenever Chilean or foreign courts receive or attempt to examine cases concerning human rights violations. The legal consequences of the amnesty law and its application by the agencies of the State under the democratic governments that followed

the military regime, as was intended by the de facto government, are entirely incompatible with the provisions of the American Convention.

[FN17] IACHR, Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.34, doc.21, 1974; Second Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.37, doc.19 corr., 1976; Third Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.40, doc.10, 1977; Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc.17, 1985.

42. Under Chilean law, the executive, legislative, and judicial branches of government are separate and independent. However, from the point of view of international law, they must be considered as a single entity within the State for the purpose of determining responsibility for the violation of international norms.[FN18] The Chilean State cannot justify its lack of compliance with the Convention with the excuse that a previous government established the amnesty law. Nor can the State justify its failure to repeal the amnesty law, or its continued application, on the inaction and omission of the legislature or on the actions of the judiciary.

[FN18] See, in this regard: Ian Brownlie, *Principles of Public International Law*, Clarendon Press, Oxford, 1990, 4th. ed. pp. 446–452; Benadava, *Derecho Internacional Público*, Editorial Jurídica de Chile, 1976, p. 151.

43. Article 27 of the Vienna Convention on the Law of Treaties enshrines the precept of customary international law whereby States Parties to a treaty may not invoke provisions of their domestic laws as a justification for failing to comply with a treaty. In addition, the Inter-American Court has held that “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”[FN19]

[FN19] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 170.

44. Responsibility for any denial of justice that Decree-Law N° 2191 may have caused--irrespective of the regime that enacted it or the branch of government that applied it or made its application possible--lies with the Chilean State. Even though the abduction and extrajudicial execution took place under the past military government, the State is internationally responsible for fulfilling its obligation to administer justice and punish the responsible agents.

45. In accordance with the principle of continuity of the State, international responsibility exists independent of changes in government. In that regard, the Inter-American Court of Human Rights has asserted that:

According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.[FN20]

[FN20] Ibid., paragraph 184.

B. Obligation of Adopting Domestic Legal Provisions (Article 2 of the American Convention)

46. The states parties to the American Convention have undertaken the obligation of respecting and guaranteeing all the rights and freedoms protected in the Convention with respect to persons under their jurisdiction and of adapting their legislation to permit the effective enjoyment and exercise of those rights and freedoms. Specifically, Article 2 of the Convention establishes the obligation of the states parties to adopt “such legislative or other measures as may be necessary“ to give effect to the rights and freedoms enshrined therein. Thus, the Inter-American Commission must examine the compatibility of the states parties’ domestic legislation with the rights enshrined in the American Convention.[FN21]

[FN21] IACHR, Report 29/92, Annual Report 1992–1993, paragraph 32.

47. Some states, in seeking mechanisms for national peace and reconciliation, have enacted amnesty laws that have left victims of serious human rights violations helpless and have deprived them of the right to access to justice. The adoption and application of such provisions is incompatible with the obligations acquired under Articles 1(1) and 2 of the American Convention.[FN22]

[FN22] IACHR, Annual Report 1985–1986, p. 204; Report 28/92 (Argentina), Report 29/92 (Uruguay), Annual Report 1992–1993; Report 36/96, Case 10.843 (Chile), Annual Report 1996, paragraph 49; Report 1/99, Case 10.480 (El Salvador), Annual Report 1998, paragraph 107.

48. The compatibility of amnesty laws with the American Convention has been examined on several occasions by the IACHR in connection with individual cases. In each of them, the IACHR found that the provisions under review allowed serious human rights violations committed against persons subject to the jurisdiction of the state party involved to go unpunished.

49. The Inter-American Commission has repeatedly indicated that amnesty laws that bar access to justice in cases involving serious human rights violations render ineffective the states parties' obligation of respecting the rights and freedoms recognized in the Convention and of ensuring their free and full exercise by all persons subject to their jurisdiction, without discrimination of any kind, as established in Article 1(1) thereof.[FN23] They thus eliminate the most effective means of enforcing human rights: the trial and punishment of violators.[FN24]

[FN23] The Inter-American Court has indicated that this provision establishes the obligation of states parties to guarantee the respect of each and every right protected by the Convention. Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, *supra*, paragraph 162; Inter-Am.Ct.H.R., Godínez Cruz Case, Judgment of January 20, 1989, Series C No. 5 (1989), paragraph 171; Inter-Am.Ct.H.R., Case of Neira Alegría et al., Judgment of January 19, 1995, *supra*, paragraph 85. See also: IACHR, Annual Report 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Reports N° 36/96 (Chile), paragraph 78, and N° 34/96 (Chile), paragraph 76; IACHR, Annual Report 1992–93, OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993, Reports N° 28/92 (Argentina), paragraph 41, and N° 29/92 (Uruguay), paragraph 51; IACHR, Annual Report 1997, OEA/Ser.L/V/II.98, Doc. 6 rev., April 13, 1998, paragraph 71.

[FN24] IACHR Reports 28/92 (Argentina) and 29/92 (Uruguay).

50. As established above, precluding the possibility of judging those responsible for the illegal detention and forced disappearance of Samuel Alfonso Catalán Lincoleo, perpetrated by agents of the State under the former military regime, violates the right to access to justice and judicial protection enshrined in the American Convention. This denial of justice stems from the enactment and application of Decree-Law N° 2191, the amnesty law, issued by the military government for the benefit of its own members. The State has kept this law in force after ratifying the American Convention; in turn, the Chilean courts have ruled it to be constitutional and have applied it in hundreds of cases. The IACHR has already, on past occasions, expressed its opinion about this law and its application by the domestic courts in particular cases being incompatible with the Chilean State's international obligations under the American Convention.[FN25]

[FN25] IACHR, Report N° 25/98 (Cases 11.505, Alfonso René Chanfeau Oryce; 11.532, Agustín Eduardo Reyes González; 11.541, Jorge Elías Andrónico Antequera, his brother Juan Carlos, and Luis Francisco González Manríquez; 11.546, William Robert Millar Sanhueza and Jorge Rogelio Marín Rossel; 11.549, Luis Armando Arias Ramírez, José Delimiro Fierro Morales, Mario Alejandro Valdés Chávez, Jorge Enrique Vásquez Escobar, and Jaime Pascual Arias Ramírez; 11.569, Juan Carlos Perelman and Gladys Díaz Armijo; 11.572, Luis Alberto Sánchez Mejías; 11.573, Francisco Eduardo Aedo Carrasco; 11.583, Carlos Eduardo Guerrero Gutiérrez; 11.585, Máximo Antonio Gedda Ortiz; 11.595, Joel Huaiquiñir Benavides; 11.652, Guillermo González de Asís; 11.657, Lumy Videla Moya; 11.675, Eulogio del Carmen Ortiz Fritz Monsalve; and 11.705, Mauricio Eduardo Jorquera Encina). See: IACHR, Annual Report 1997, OEA/Ser.L/V/II.98, doc. 6, rev., April 13, 1998, pp. 520–559; Annual Report 1996, Reports N° 36/96 and 34/96, Chile, pp. 162–240. See also in this regard: Griego Case, in:

Yearbook of the European Convention on Human Rights, 1969, Martinus Nijhoff, The Hague, 1972.

51. Aware of the close relationship between the amnesty law, impunity, and the violation of fundamental human rights, the Chilean State has taken measures such as the enactment of Law N° 19.123 to compensate victims' relatives. As it has expressed on several occasions, the IACHR repeats that the violation of victims' rights from the moment of their arrest up to the denial of justice must be considered as a whole.

52. The Inter-American Commission has duly noted that President Patricio Aylwin contacted Chile's Supreme Court in March 1991 to urge it to consider that the amnesty in force should not and could not be an obstacle to the judicial investigation and identification of the corresponding responsibilities. The Commission also takes due note of the initiative of his successor, President Eduardo Frei Ruiz-Tagle, who addressed Chile's Chamber of Deputies on May 5, 1995, in the context of proposed amendments to the Code of Criminal Procedure, and reminded that body that:

The International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights, two treaties ratified by Chile and currently in force, indicate the duty of states parties to investigate and judge violations of the human rights protected by those treaties, and to rule on the legal remedies brought by the victims.[FN26]

[FN26] Note N° 666-330 of May 5, 1995, from the President of the Republic of Chile to the President of that country's Chamber of Deputies.

53. Similarly, the IACHR recognizes the importance of the creation of the National Truth and Reconciliation Commission and its work in gathering information on human rights violations and disappearances. Its report named the victims individually, including Samuel Alfonso Catalán Lincoleo, recognized that their cases constituted grave violations of fundamental rights attributable to agents of the State, and attempted to establish their whereabouts and take measures that would make full amends and clear the name of the victims and their families.

54. The Commission recognizes and appreciates Law N° 19.123, an initiative of the first democratic government after the military dictatorship that provides victims' families with: (a) a lifetime pension in an amount no less than the average income of a Chilean family; (b) a special procedure for declarations of presumed death; (c) specialized attention from the State for health care, education, and housing; (d) cancellation of educational, housing, tax, and other debts owed to state agencies; and (e) exemption from compulsory military service for victims' children.

55. Nonetheless, in accordance with Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, these measures are not enough to guarantee respect for petitioners' human rights. The international obligations set forth in those provisions require

that the right to justice in the specific case be guaranteed, that the guilty be punished, and that due reparations be made to the victims' families.

56. The Chilean State has affirmed that revocation of the amnesty law would have no effect as far as those responsible for the violations are concerned, by virtue of the principle contained in Article 9 of the American Convention and Article 19(3) of the Chilean Constitution under which criminal law cannot be applied retroactively. In this regard, the Commission points out that the principle of nonretroactive application cannot be invoked with respect to those granted amnesty, because at the time the acts in question were committed they were classified and punishable under Chilean law as then in force.

57. The IACHR concludes that the Chilean State is responsible for the application of the amnesty law of April 19, 1978, in this case through the rulings of the lower courts as upheld by the judgment of the Supreme Court of Justice of January 16, 1997. The IACHR also finds the State responsible for failing to bring its domestic law into line with the American Convention through the repeal of the amnesty law, in violation of the obligations assumed under Articles 1(1) and 2 thereof.

C. The Right to a Fair Trial (Article 8 of the American Convention)

58. The violation of the right to justice and the resulting impunity in the present case are the result of a chain of events. This pattern began when the military government issued a series of laws designed to form a complex legal framework of impunity for itself and for agents of the State guilty of human rights violations. This process commenced formally in 1978 when the military government enacted Decree-Law N° 2191, "the amnesty law," and culminated with the judgment handed down by the Supreme Court of Justice on January 16, 1997.

59. The Inter-American Commission has, in other cases, ruled that amnesties and the effects thereof cannot deprive victims, their family members, or survivors of the right to obtain, at a minimum, adequate reparations for violations of human rights enshrined in the American Convention. This position derives largely from the Inter-American Court's interpretation of the consequences of a state's violation of its duty to guarantee human rights under Article 1(1) thereof. The right to adequate compensation is also intertwined with the right to judicial protection enshrined in Article 25 of the Convention.[FN27]

[FN27] Inter-Am.Ct.H.R, Velásquez Rodríguez Case, paragraph 174.

60. The judicial consequences of the amnesty are incompatible with the Convention in that they deny the victim the right to a fair trial as set forth in Article 8 thereof.

61. Although the State has the obligation to provide effective recourse (Article 25), which must be "substantiated in accordance with the rules of due process of law"[FN28] (Article 8(1)), it is important to note that in many of Latin America's criminal justice systems the victim has the right to file charges in criminal proceedings. Such is the case in Chile, where the victim of a

crime has a fundamental right to recourse before the courts as a party in the criminal proceedings,[FN29] and where that activity by the victim is essential to the proceedings. In the case at hand, the amnesty law clearly affected the right of the victim and his family to obtain justice through effective recourse against those responsible for violating his human rights.

[FN28] Inter-Am.Ct.H.R, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, paragraph 91.

[FN29] Chilean Code of Criminal Procedure, Title II, "Of Criminal Action and of Civil Action in Criminal Proceedings," Articles 10/41.

62. Even if this were not the case, since the crimes in question here are public crimes--that is to say, subject to ex officio prosecution--the State has the legal obligation to investigate them, and that is an obligation that may not be delegated or renounced. It is incumbent on the Chilean State to take punitive action and press forward with the various procedural stages, in fulfillment of its duty of guaranteeing the right to justice of victims and their families. This function must be assumed by the State as its own legal duty; it must not be a step taken by private interests that depends upon the initiative of those private individuals or upon their offer of proof.[FN30]

[FN30] See: Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 79.

63. The amnesty law also deprived the victim's family of the possibility of obtaining reparations through Chile's civil courts. On this point, Article 8(1) of the American Convention provides:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law . . . for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

64. In any event, under Chilean law, the possibility of initiating a civil case does not necessarily depend on the results of criminal proceedings. Nonetheless, the civil claim must be lodged against a specific person in order to establish their responsibility for the alleged acts and determine the payment of compensation. The absence of an investigation by the State made it materially impossible to establish responsibility through the civil courts. Even though the Supreme Court of Chile has affirmed the fact that civil and criminal proceedings are independent,[FN31] the manner in which the amnesty was applied by the courts affected the right to obtain reparations through the civil courts, because it was impossible to individualize or identify those responsible for the disappearance, torture, and extrajudicial killing of Samuel Alfonso Catalán Lincoleo.

[FN31] Supreme Court of Chile, Ruling on a claim for nonapplication of Decree-Law 2191, August 24, 1990, paragraph 15; the same court, Ruling on a request for clarification of September 28, 1990, paragraph 4.

65. Because of the way in which it was applied and interpreted by the Chilean courts in the present case, the amnesty law prevented the victim's family from enjoying their right to a fair trial to duly determine their civil rights, as established in Article 8(1) of the American Convention.

D.T The Right to Judicial Protection (Article 25 of the American Convention)

66. In the case at hand, the victim and his family were deprived of their right to effective recourse against acts that violated their fundamental rights, in breach of Article 25 of the Convention:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

67. Concerning the states' legal obligation of providing effective domestic recourse, the Inter-American Court of Human Rights has asserted the following:

Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[FN32]

[FN32] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Preliminary Objections, paragraph 91.

68. The Inter-American Court has further explained that for such remedies to be effective, they must be suitable to address the legal right that has been infringed.[FN33] In interpreting this matter under the American Convention, the Court has said that:

[FN33] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

The absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[FN34]

[FN34] Inter-Am.Ct.H.R., Advisory Opinion OC-9/87, paragraph 24.

69. In the present case, the amnesty law and its application by the Chilean Courts barred the victim's family's access to effective recourse for the protection of their rights granted under Article 25 of the American Convention. Indeed, through these legislative and judicial acts, the State declined to punish the serious crimes committed against Samuel Alfonso Catalán Lincoleo that violated his rights to life, liberty, and physical and moral integrity enshrined in the American Declaration and the American Convention. In addition, the manner in which the decree-law was enforced by the Chilean courts not only kept perpetrators of human rights violations from being punished, but also ensured that no charges would be brought against those responsible; as a result, under domestic law they have been considered innocent.

70. The amnesty law rendered the crimes without juridical effect and left Samuel Alfonso Catalán Lincoleo and his family without any judicial recourse that might have permitted the due trial and punishment of those responsible for the human rights violations perpetrated against him under the military dictatorship.

71. By enacting and enforcing Decree-Law N° 2191, the Chilean State failed to guarantee the right enshrined in Article 25 of the American Convention to the detriment of Samuel Alfonso Catalán Lincoleo and his family.

E. The Obligation to Investigate and Punish (Article 1(1) of the American Convention)

72. Article 1(1) of the American Convention provides that the States Parties undertake to respect the rights recognized therein and to ensure their free and full exercise. As the Inter-American Court has stated, this obligation implies an actual duty on the part of the States to take measures that effectively ensure those rights.[FN35] By virtue of this obligation, the Chilean State has a legal duty to take reasonable steps to prevent human rights violations, to use the means at its disposal to investigate violations committed within its jurisdiction, to identify those responsible, to impose upon them the appropriate punishments, and to ensure the victim adequate compensation.[FN36]

[FN35] The Inter-American Court has said that:

The second obligation of the States Parties is to “ensure” the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4 (1988), paragraph 166; Godínez Cruz Case, Judgment of January 20, 1989, Series C No. 5 (1989), paragraph 175.

[FN36] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, op. cit., paragraph 174; Godínez Cruz Case, op. cit., paragraph 184.

73. The IACHR believes that the amnesty law establishes a legal barrier to obtaining relevant information regarding the facts and circumstances surrounding the violation of a fundamental right; it also impedes domestic legal recourse for the judicial protection of fundamental rights established in the American Convention, the laws of Chile, and its Constitution.

74. In cases concerning the applicability of amnesty laws, the Commission has reiterated that states must adopt “the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the de facto period.”[FN37] Regarding enforcement of the amnesty law in Chile, the Inter-American Commission has ruled that “the State has the obligation to investigate all violations that have been committed within its jurisdiction, for the purpose of identifying the persons responsible”[FN38] and that the Chilean State should “amend its domestic legislation to reflect the provisions of the American Convention on Human Rights, so that violations of human rights by the ‘de facto’ military government may be investigated, with a view to identifying the guilty parties, establishing their responsibilities and effectively prosecuting them, thereby guaranteeing to the victims and their families the right to justice that pertains to them.”[FN39]

[FN37] IACHR, Annual Report 1992–1993, OEA/Ser.L/V/II.83 Doc.14, Uruguay 29/92, Recommendations, paragraph 3.

[FN38] IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev., Chile 36/96, paragraph 77.

[FN39] IACHR, Annual Report 1996, OEA/Ser.L/V/II.95 Doc. 7 rev., Chile 36/96, Recommendations, paragraph 111.

75. In interpreting the scope of Article 1(1) of the American Convention, the Inter-American Court has asserted that the obligation it contains implies:

The duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically

ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN40]

[FN40] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.

76. The Inter-American Court has also stated that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN41]

[FN41] Ibid., paragraph 174.

77. In its interpretation of Article 1(1) of the American Convention, the Inter-American Court has also affirmed that "the second obligation of the States Parties is to 'ensure' the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention." [FN42] The Court further pursues this concept in the following terms:

[FN42] Ibid., paragraph 166.

What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.[FN43]

[FN43] Ibid., paragraph 173.

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[FN44]

[FN44] Ibid., paragraph 174.

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN45]

[FN45] Ibid., paragraph 176.

78. As regards the investigation, the Court notes that it "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." [FN46]

[FN46] Ibid., paragraph 177.

79. In the present case, the State is obliged to carry out an exhaustive investigation and to punish, through its jurisdictional bodies, those responsible for the acts that resulted in the illegal arrest and forced disappearance of Samuel Alfonso Catalán Lincoleo.

80. The IACHR believes it is important to note, once again, that the authorities should have conducted a serious investigation of the incident in order to establish the real, objective truth. However, the State's apparatus instead acted in such a manner that the violations went unpunished and the rights of Samuel Alfonso Catalán Lincoleo's family were not upheld.

81. The Truth and Reconciliation Commission, set up by the democratic government of Chile to investigate past human rights violations, made a commendable effort to compile information concerning human rights violations and the situations of disappeared detainees for the purpose of establishing their whereabouts and taking steps to make full amends and to clear their reputations. Nevertheless, although its work covered a large portion of the total number of cases, it did not allow for the investigation of criminal acts committed by agents of the State, nor the identification and punishment of those responsible, precisely because of the amnesty law. For this reason, the right of the surviving victims and the families to know the true facts was violated by the Chilean State.

82. In addition, the National Truth and Reconciliation Commission was not a judicial body, and its function was limited to establishing the identity of the victims of violations to the right to life. Given the nature of its mandate, the National Commission did not have the authority to publish the names of those who committed crimes nor to impose any type of punishment. Consequently, notwithstanding its importance in establishing the facts and awarding compensation, this National Commission cannot be considered an adequate substitute for a judicial process. In this regard, former President of the Inter-American Court Dr. Pedro Nikken has stated that:

The establishment of a truth commission is a plausible means, within a political negotiation to reach peace in an armed conflict, as a first step and perhaps the most tangible contribution that can be made within that scenario to combat impunity. . . [Nonetheless,] the establishment of the truth should not inhibit the judicial organs from judging and punishing the persons responsible, but outside the context of a political negotiation.

Impunity for crimes committed by state agents or under the cover of the state does not entail only the failure to punish the persons responsible for those crimes. An inseparable component of such impunity is the failure to carry out any investigation, the cover-up, and even the falsification of the facts to protect the persons responsible. There is no doubt that the discovery of the truth, which is the responsibility of independent persons, destroys that element which, while not useful in itself for eradicating impunity, fulfills at least a dual function. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis. And second, it contributes to creating a collective conscience as to the need to impede the repetition of similar acts and shows those who are capable of doing so that even if they may escape the action of justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human rights. In this regard, even though these do not constitute punitive mechanisms, they may perform a preventive function that is highly useful in a process of building peace and the transition to democracy.[FN47]

[FN47] Pedro Nikken, *El manejo del pasado y la cuestión de la impunidad en la solución de los conflictos armados de El Salvador y Guatemala*, published in “*Liber Amicorum – Héctor Fix-Zamudio*,” Volume I, Secretariat of the Inter-American Court of Human Rights, San José, Costa Rica, 1998, pp. 167 and 168.

83. The report of the National Truth and Reconciliation Commission concluded that:

From a strictly preventive standpoint, this Commission considers that an indispensable element for obtaining national reconciliation and for avoiding the repetition of the acts committed would be the State’s full exercise of its power to punish. The full protection of human rights is conceivable only under a true Rule of Law. The Rule of Law assumes that all citizens be subject to the law and the courts of justice, which involves the application of punishment as stipulated by criminal law on an equal basis for all those who violate the norms which ensure respect for human rights.[FN48] (Emphasis added.)

[FN48] Report of the National Truth and Reconciliation Commission, February 1991, Vol. 2, p. 868.

84. The State's acknowledgement of responsibility, the partial investigation of the facts, and the subsequent payment of compensation are not, in and of themselves, sufficient to comply with the obligations set forth in the Convention. According to Article 1(1), the State has the obligation of investigating violations committed under its jurisdiction in order to identify those responsible, impose the appropriate punishment, and provide the victim with adequate reparations.[FN49]

[FN49] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 174.

85. The Inter-American Commission concludes that the State failed to comply with its obligation of investigating and punishing those responsible for violating the human rights of Samuel Alfonso Catalán Lincoleo and that the application of the amnesty law and, later, of statutory limitations to the action, despite the incriminating evidence that existed, demonstrates that the State also failed to comply with its obligation of imposing punishment.

86. By enacting Decree-Law N° 2191 and applying it in the case of Samuel Alfonso Catalán Lincoleo, the Chilean State failed to fulfill the obligation of investigating and punishing those responsible, as set forth in Articles 1(1), 8, and 25 of the American Convention, to the detriment of the victim's family.

F. The Right to Life, Liberty, and Humane Treatment (Articles 4, 5, and 7 of the American Convention and Article I of the American Declaration)

87. According to the facts described in the complaint and which the Chilean State has expressly acknowledged, Mr. Samuel Alfonso Catalán Lincoleo was deprived of his liberty on August 27, 1974, by police officers, members of the armed forces, and civilians, absent a written order from a competent authority. From that time until the date upon which this report was adopted, Mr. Catalán Lincoleo has remained a victim of forced disappearance carried out by the aforesaid agents of the Chilean State. As also said in this report, those facts have been demonstrated by the National Truth and Reconciliation Commission.

88. In analyzing the IACHR's competence to study the substance of this case, it has been determined that the arrest and forced disappearance of Samuel Alfonso Catalán Lincoleo constitute a multiple and ongoing violation of several rights enshrined in the American Declaration and the American Convention. Article I of the American Declaration stipulates that "every human being has the right to life, liberty and the security of his person," while the relevant provisions of the American Convention grant the following guarantees:

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

89. Article II of the Inter-American Convention on Forced Disappearance of Persons defines violations of this kind:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.[FN50]

[FN50] The Inter-American Convention on Forced Disappearance of Persons came into force on March 28, 1996. The Chilean State signed it on June 10, 1994, but, as of the date of this report, has not yet ratified it. The origins of the rules applicable to forced disappearances can be found

in Resolution 33/173 of the United Nations General Assembly, which refers to the rights to life, liberty, security, and freedom from torture and from arbitrary arrest and detention (Articles 3, 5, 9, 10, and 11 of the Universal Declaration of Human Rights and Articles 6, 7, 9, and 10 of the International Covenant on Civil and Political Rights). In this regard, see: José Antonio Guevara, *El crimen de lesa humanidad de desaparición forzada de personas: elementos para su prevención*, in “Ruptura”, Annual Review of the Law School Association, Faculty of Jurisprudence of the Catholic University of Ecuador (PUCE), Vol. I, Year 2000, p. 232.

90. The Inter-American Court has stated that the forced disappearance of persons “is one of the most serious and cruel human rights violations.”[FN51] The Court’s broad jurisprudence on this matter was reiterated in another recent judgment:

[FN51] Inter-Am.Ct.H.R., Blake Case, Judgment of January 24, 1998, paragraph 66.

Forced or involuntary disappearance constitutes a multiple and continuous violation of several Convention rights, in that not only does it lead to an arbitrary denial of freedom, but also endangers the detainee’s personal integrity, security, and life. It also leaves the victim in a state of complete defenselessness, opening up the way for other related crimes.

This phenomenon also entails neglecting the duty of organizing the governmental apparatus to ensure the rights enshrined in the Convention; as a result of this, by carrying out or tolerating actions intended to lead to forced or involuntary disappearances, by failing to properly investigate them, and by not punishing, when appropriate, the perpetrators, the State violates the duty of respecting the rights protected by the Convention and of ensuring their free and full exercise, with respect to both the victim and his relatives, for identifying his whereabouts.[FN52]

[FN52] Inter-Am.Ct.H.R., Bámaca Velásquez Case, Judgment of November 25, 2000, paragraphs 128 and 129.

91. The Inter-American Commission believes that the facts of this case, which have been expressly acknowledged by the Chilean State, clearly constitute the violations referred to in the articles quoted above and the corresponding interpretation. Consequently, the IACHR holds the Chilean State responsible for violating Mr. Samuel Alfonso Catalán Lincoleo’s right to life, liberty, and humane treatment as set forth in Articles 4, 5, and 7 of the American Convention and in Article I of the American Declaration.

VI. ACTIONS TAKEN AFTER REPORT N° 116/00

92. On December 8, 2000 the Commission adopted Report N° 116/00 in this case, pursuant to Article 50 of the American Convention, and forwarded it to the Chilean State on December

15, 2000 with the pertinent recommendations. The IACHR set a time period of two months for the State to inform on the measures taken toward compliance with said recommendations.

93. On February 5, 2001 the State sent a communication requesting a 30 day extension to “submit the pertinent response, considering that the competent authorities have not yet completed the actions with a view to an adequate response to the petition presented in this case”.

94. The IACHR notes that the State has not presented any information regarding compliance with the recommendations in Report 116/00, as requested according to the procedural stage of this case. The extension was not requested to adopt such measures, but rather to prepare “an adequate response to the petition”, with no indication of the actions taken so far to solve the case and provide reparations to the relatives of the victim. The Commission must consider the foregoing in the context of this case, given that more than two years have elapsed since the IACHR placed itself at the disposal of both parties with a view to the friendly settlement procedure, and that no response was received from either of them. Therefore, the IACHR decides not to grant the extension and approves the instant report under Article 51 of the American Convention.

VII. CONCLUSIONS

95. The Inter-American Commission concludes that the Chilean State has unquestionably violated, with respect to Samuel Alfonso Catalán Lincoleo, the right to personal liberty, life, and humane treatment set forth in Article I of the American Declaration and in Articles 4, 5, and 7 of the American Convention. The IACHR furthermore concludes that the Chilean State has violated, with respect to the members of Mr. Catalán Lincoleo’s family, the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. The Inter-American Commission also states, once again, that Decree-Law N° 2191—the amnesty law enacted in 1978 by Chile’s former military regime—is incompatible with Articles 1, 2, 8, and 25 of the American Convention.

VIII. RECOMMENDATIONS

96. Based on the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION REITERATES THE FOLLOWING RECOMMENDATIONS TO THE CHILEAN STATE:

1. Establish responsibility for the murder of Samuel Alfonso Catalán Lincoleo by due process of law, so that the guilty may be duly punished.
2. Adapt its domestic legislation to the provisions of the American Convention, in such a way as to leave Decree-Law N° 2191 of 1978 without effect.
3. To take the steps necessary for the members of the victim’s family to receive adequate and timely compensation, including full reparations for the human rights violations described herein as well as payment of fair compensation for physical and nonphysical damages, including moral damages.

IX. PUBLICATION

97. On February 23, 2001 the Commission forwarded Report N° 12/01--the text of which is in the preceding paragraphs--to the Chilean State and to the petitioners, pursuant to Article 51(2) of the American Convention; and it established a period of thirty days for the State to supply information on compliance with the above recommendations. No response was received from the Chilean State by the date this report was approved.

98. Accordingly, and pursuant to Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides: to reiterate the conclusions and recommendations contained in Chapters VII and VIII supra; to publish this report; and to include it in the Commission's Annual Report to the General Assembly of the OAS. Pursuant to the provisions contained in the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Chilean State with respect to those recommendations, until the State has fully complied with them.

Done and signed by the Inter-American Commission on Human Rights on April 16, 2001.
(Signed): Juan E. Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Hélio Bicudo, Robert Goldman, Peter Laurie and Julio Prado Vallejo, Commissioners.